IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION No. 7429 of 2005

Between:

S.Chandraiah, s/o Veeraiah,
Karimnagar, Karimnagar District.

..... PETITIONER

AND

The Regional Manager, APSRTC, Karimnagar,

Karimnagar District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or directions, more in the nature of writ of mandamus, directing the respondent herein to grant special grade increments from the year 1997 by counting the out of service period as on duty and pay all consequential benefits including refixed arrears and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.P.GOVINDA RAJULU

Counsel for the Respondent: MR.P.VINAYAKA SWAMY

The Court at the admission stage made the following:

ORDER:

The petitioner filed this writ petition seeking issue of Writ of Mandamus, directing the respondent to grant special grade increments from the year 1997 by counting the out of service period as on duty and pay all consequential benefits including refixed arrears.

Heard the learned Counsel for the petitioner and the learned standing Counsel for the respondent.

The petitioner was appointed as a Conductor in the respondent Corporation in the year 1984. On certain irregularities, he was removed from service by order dated 27.10.1986. The petitioner challenged the order of removal before the Labour Court where an Award was passed in I.D.No.352 of 1989, dated 22.01.1990 directing his reinstatement into service with continuity of service but without any back wages or any other attendant benefits. Accordingly, the petitioner was reinstated into service in the month of October, 1990. The grievance of the petitioner is that he was not granted special grade increment after completion of 12 years service from the date of his initial appointment. Hence the present writ petition.

The learned Counsel for the petitioner contended that there is no distinction between active service and notional service for the purpose of reckoning service for sanction of special grade. He further contended that the petitioner has been directed

to be reinstated by the Labour Court with continuity of service and hence he shall be deemed to be in service throughout, and hence, prays to give a direction to the respondent to sanction special grade to the petitioner by reckoning service from the date of his appointment.

On the other hand, the learned standing Counsel for the respondent contended that the petitioner would be entitled for stagnation increments only on completion of 12 years of active service, and hence the petition is devoid of merit and prays to dismiss the writ petition.

The learned Counsel for the petitioner placed strong reliance on a decision in ***M.D.Rahamatullah vs. Depot Manager, APSRTC*** wherein it was held:

> "It is needless to state that though under the award passed by the Labour Court, the petitioner is not entitled to the back-wages, since the Labour Court has awarded continuity of service, it goes without saying that after reinstatement, the management, while fixing the wage payable to the petitioner, should take into account the continuity of service of the petitioner between 17.11.1986 and the date on which he was reinstated into service. It is well settled that whenever an Industrial Court or any other Court grants continuity of service to an employee, the effect of such grant is that the employee should be deemed to have been in service when he was out of employment. This is a legal fiction flowing from grant of continuity of service."

> "An employee who has succeeded before the Labour Court and who has been directed to be reinstated with continuity of service has to be treated on par with all other employees. Otherwise, a stigma will be attached to the employees who are reinstated by virtue of the Award of the Labour Court."

In view of the facts and circumstances of the case on hand and in view of the findings of this Court made in the aforesaid judgment, the petitioner is entitled to for special grade increments after completion of 12 years service from the date of his initial appointment.

Therefore, the respondent is directed to sanction Special Grade to the petitioner by reckoning his service from the date of his initial appointment, including out of service, and pay the arrears, if any, under the Special Grade, within a period of three months from the date of receipt of a copy of this order.

The Writ Petition is, accordingly, allowed. No order as to costs.

Dated: 05.04.2005

Dsr

ASSISTANT REGISTRAR

To:

1. The Regional Manager, APSRTC,

Karimnagar, Karimnagar District

2. Two CD copies

*Form-NIC-OGS/WP{**RS**}*